

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

NO: 12-CV-0006-TOR

Plaintiff,

ORDER GRANTING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT AS AGAINST
DEFENDANTS JR ZUKIN CORP.,
TERRY TAYLOR, TAMMY
TAYLOR, DAVE SHEELEY, TERE
SHEELEY, JOHN CRAMER, CARR
CRAMER, MARTENS FAMILY
CHURCH AT OMAK DUCK LAKE
TRUST, CHURCH AT OMAK
AIRPORT TRUST, and FAMILY
DEFENSE LEAGUE

RHONDA MARTENS, et al..

Defendants.

BEFORE THE COURT is Plaintiff's Motion for Default Judgment as

against Defendants JR Zukin Corporation, Terry Taylor, Tammy Taylor, Dave

Sheeley, Teresa Sheeley, John Cramer, Carrie Cramer, Martens Family Church at

Omak Duke Lake Trust, Church at Omak Airport Trust, and Family Defense

League (ECF No. 41). This matter was submitted for consideration without oral

1 argument. The Court has reviewed the motion and the record and files herein and
2 is fully informed.

3 **BACKGROUND**

4 This is an action to foreclose on tax liens against two properties which the
5 United States alleges are beneficially owned by Defendants Jim and Rhonda
6 Martens (“the Martens”), but are titled in the name of certain trusts as their
7 nominee, alter ego, or fraudulent transferee. ECF No. 1 at ¶ 1. The first property
8 (the “Duck Lake Property”) is a residence located at 128 Duck Lake Road in
9 Okanagan County. Plaintiff alleges that this property was transferred for no
10 consideration to Defendant Martens Family Church at Omak Duck Lake Trust
11 (“Family Church Trust”), whose trustee is Defendant Family Defense League.
12 ECF No. 1 at ¶ 28. The second property (the “Airport Property”) is a 20-acre
13 parcel of undeveloped property adjacent to the Okanagan County airport. Plaintiff
14 alleges that the Martens acquired a 25% interest in the Airport Property as tenants-
15 in-common with Defendants Dave and Teresa Sheeley (“Sheeleys”), Terry and
16 Tammy Taylor (“Taylors”), and John and Carrie Cramer (“Cramers”) on
17 December 19, 2005. ECF No. 1 at ¶ 19. Plaintiff alleges that the Martens
18 subsequently quit-claimed their interest in the property for no consideration to
19 Defendant Church at Omak Airport Trust (“Airport Trust”), whose trustee is
20 Family Defense League. ECF No. 1 at ¶ 30. Defendant JR Zukin Corporation was

named as a defendant because it has recorded a judgment lien against the Martens.

ECF No. 41 at 4.

Despite being properly served, the Family Church Trust, Airport Trust,

Family Defense League, Sheeleys, Taylors, Cramers, and JR Zurkin Corp.

(hereafter the “Non-Appearing Defendants”) did not file an answer or otherwise

defend within the time limit specified in Federal Rule of Civil Procedure 12(a).

Accordingly, the Clerk of Court entered default against them on May 9, 2013.

ECF No. 24. As of the date of this Order, the Non-Appearing Defendants have not

filed an answer or moved to set aside their default. In the instant motion, Plaintiff

asks the Court to extinguish whatever interest the Non-Appearing Defendants may

have in the Duck Lake Property and/or the Airport Property.

DISCUSSION

Motions for entry of default judgment are governed by Federal Rule of Civil

Procedure 55(b). Rule 55(b)(1) provides that the Clerk of Court may enter default

judgment when the plaintiff's claim "is for a sum certain or a sum that can be made

certain by computation.” Fed. R. Civ. P. 55(b)(1). When the value of the claim

cannot be readily determined, or when the claim is for non-monetary relief, the

plaintiff must move the court for entry of default judgment. Fed. R. Civ. P.

55(b)(2) In such circumstances, the court has broad discretion to marshal any

1 evidence necessary in order to calculate an appropriate award. *See* Fed. R. Civ. P.
2 55(b)(2)(A)-(D).

3 The entry of default judgment under Rule 55(b) is “an extreme measure.”
4 *Cmtv. Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002). “As a general
5 rule, default judgments are disfavored; cases should be decided upon their merits
6 whenever reasonably possible.” *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d
7 1183, 1189 (9th Cir. 2009). In determining whether to enter default judgment, a
8 court should consider the following factors: “(1) the possibility of prejudice to the
9 plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of
10 the complaint; (4) the sum of money at stake in the action; (5) the possibility of a
11 dispute concerning material facts; (6) whether the default was due to excusable
12 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure
13 favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471-72; *see*
14 *also United States v. VanDenburgh*, 249 F. App’x 664, 665 (2007). All well
15 pleaded allegations in a complaint are deemed admitted on a motion for default
16 judgment. *Matter of Visioneering Constr.*, 661 F.2d 119, 124 (9th Cir. 1981).

17 1. Possibility of Prejudice to Plaintiff

18 Despite having been properly served, the Non-Appearing Defendants have
19 failed to plead or otherwise defend. As a result, Plaintiff’s claims against them
20 cannot move forward on the merits, and Plaintiff’s ability to obtain effective relief

1 has been prejudiced. This factor weighs in favor of entering default judgment.

2 2. Merits of Plaintiff's Substantive Claims

3 Plaintiff's claims appear to have substantial merit. Plaintiff alleges that the
4 Martens transferred the Duck Lake Property and the Airport Property to the Family
5 Church Trust for no consideration in an effort to protect the properties from
6 Plaintiff's tax liens. ECF No. 1 at ¶¶ 16, 28. Plaintiff further alleges that these
7 transfers were completed with the assistance of Glenn Stoll, an individual who
8 "routinely promotes fraudulent tax evasion schemes, including the use of
9 ministerial trusts . . . to escape tax collection." ECF No. 1 at ¶¶ 28, 30.

10 In the instant motion, Plaintiff argues that the Non-Appearing Defendants
11 effectively disclaimed any interest in the subject properties by failing to plead or
12 otherwise defend. The Court agrees. Despite receiving notice of Plaintiff's efforts
13 to foreclose upon the properties, the Non-Appearing Defendants failed to assert
14 any interest in them. By remaining silent, the Non-Appearing Defendants forfeited
15 their right to a portion of the proceeds from a potential future sale of either
16 property. This factor weighs strongly in favor of entering default judgment.

17 3. Sufficiency of the Complaint

18 The Court finds that the Complaint states a claim upon which relief may be
19 granted in that it is grounded in a cognizable legal theory and alleges sufficient

1 facts to support that theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
2 699 (9th Cir. 1990). This factor weighs in favor of entering default judgment.

3 4. Sum of Money at Stake

4 Plaintiff has not sought an award of damages; rather, Plaintiff has asked the
5 Court to order the sale of the subject properties to partially satisfy the Martens'
6 outstanding tax liabilities. According to public records maintained by the
7 Okanogan County Assessor's Office, the 2014 market values of the Duck Lake
8 Property and the Airport Property are \$330,600 and \$80,000, respectively. ECF
9 No. 41-1 at Exhibit 2.

10 5. Possibility of Dispute as to Material Facts

11 Given that the Non-Appearing Defendants have not answered the Complaint
12 or otherwise participated in this case, there remains a possibility that material facts
13 are disputed. It bears noting, however, that any such disputed issues of fact are
14 likely to be resolved as Plaintiff's claims against the Martens proceed. This factor
15 weighs slightly against entering default judgment.

16 6. Whether Default is Attributable to Excusable Neglect

17 The Court has no means of determining whether excusable neglect
18 contributed to the default of the Non-Appearing Defendants. Given that each of
19 these Defendants was properly served, however, the Court will presume that

1 excusable neglect did not play a role. This factor weighs in favor of entering
2 default judgment.

3 **7. Policy Favoring Decisions on the Merits**

4 Public policy clearly favors resolution of cases on their merits. *Eitel*, 782
5 F.2d at 1472; *Westchester Fire*, 585 F.3d at 1189. Nevertheless, this policy must
6 eventually yield to the proper administration of justice. Where, as here, a party
7 fails to defend on the merits of a claim, entry of default judgment is generally an
8 appropriate remedy. Accordingly, the Court will grant Plaintiff's motion and order
9 that default judgment be entered against the Non-Appearing Defendants.

10 **IT IS HEREBY ORDERED:**

11 Plaintiff's Motion for Default Judgment against Defendants JR Zukin
12 Corporation, Terry Taylor, Tammy Taylor, Dave Sheeley, Teresa Sheeley, John
13 Cramer, Carrie Cramer, Martens Family Church at Omak Duke Lake Trust
14 ("Family Church Trust"), Church at Omak Airport Trust ("Airport Trust"), and
15 Family Defense League (collectively the "Non-Appearing Defendants") (ECF No.
16 41) is **GRANTED**. The Non-Appearing Defendants have no interest in the
17 Subject Properties identified in the Complaint. Any future sale of the Subject
18 Properties shall take place free and clear of any interests held by the Non-
19 Appearing Defendants. The Non-Appearing Defendants are not entitled to any
20 proceeds stemming from any future sale.

1 The District Court Executive is hereby directed to enter this Order, provide
2 copies to counsel, mail a copy to all unrepresented Defendants at their addresses of
3 record, and enter **JUDGMENT** against the Non-Appearing Defendants as
4 specified herein.

5 **DATED** November 7, 2013.



6 A handwritten signature in blue ink that reads "Thomas O. Rice".
7 THOMAS O. RICE
8 United States District Judge

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